H.R. 2824 and Related Amendments
Talking Points
Impact on the Cherokee Nation

I. The Watson legislation and related amendments are critical issues for Oklahomans.

- The Cherokee Nation is one of the largest employers in Oklahoma with more than 6,500 employees. More than 179,000 Cherokee citizens living in the state.

II. Regardless of the merits of the issue, Congress should let the litigation work its way through the courts before taking any action.

- This issue is being litigated in U.S. District Court in Washington, D.C., the U.S. Court of Appeals for the D.C. Circuit and the Cherokee Nation Tribal Court.

- The Watson bill and related amendments would undermine the efforts of the judicial branch and would ignore Congress' customary practice of respecting courts and staying out of litigation.

- There has already been significant progress in the Cherokee Tribal Court. In May, the judge reinstated all 2,867 Freedmen descendants who had been disenrolled because of the March 2007 amendment while the court reviews their challenges. Another Tribal Court order in May allowed all eligible Freedmen descendants to vote in the June 2007 election.

- The Cherokee Tribal Court system is an independent branch of the Cherokee Nation's government, and it will rule on the issues fairly. I am assured and believe that the Cherokee Nation will respect the Court's decision.

III. The Cherokee Nation has continued to protect the rights of the Freedmen descendants.

- I understand that, consistent with the March 2007 amendment, the Cherokee Nation has unilaterally and voluntarily committed itself to assisting all 2,867 disenrolled Freedmen descendants to become Cherokee citizens through tracing Cherokee ancestry, regardless of how long it takes.

- The Tribal Court appointed legal counsel for the Freedmen descendants who are challenging their citizenship status at the request and expense of the Cherokee Nation.

- The Nation supported reinstating the Freedmen descendants to citizenship while the court reviews their challenges of the March 2007 amendment.
• The Nation supported another Tribal Court order that reopened voter registration for the Freedmen descendants for the June 2007 election. This allowed them additional time – beyond the registration deadline – to register to vote in the elections.

IV. This legislation would severely impact the poorest of the poor of Cherokee citizens.

If Congress eliminates the Cherokees' federal funding, the impact will be severe. Overall, the Nation would lose more than $270 million in federal funding it has estimated for its 2008 budget, and about 6,500 jobs would be lost.

• The Nation would lose more than $108 million in federal funding for health care it has estimated for its 2008 budget. The Nation currently provides health care to 126,000 patients, including 241 Freedmen descendants, and it is the only source of health care for more than 44,000 American Indians who represent dozens of tribes. In 2006, Cherokee Nation clinics had more than 318,000 ambulatory care visits.

• Without federal funding, many of these patients have no option for treatment at all. In some communities, the Cherokee Nation clinic is the only medical facility. Others may have to drive an hour or more over poor roads to receive treatment at already overburdened rural health-care facilities.

• Without federal funding, many will have no way to pay the bills after seeing a doctor.

• Eliminating federal funding will create a health care crisis leaving many rural health-care providers with an impossible choice: treat thousands of patients who cannot pay or turn away patients requiring medical attention.

• Nearly $26 million in federal education and child care funding estimated for the 2008 budget would be cut. These programs include federal child care and programs and education services.

• 842 children in Head Start and Early Head Start programs would be affected.

• Sequoyah High School, a boarding school with an enrollment of nearly 400 Indian students from all over the country would be forced to close.

• More than 20,000 Indian students who receive assistance in their public schools through the JOM Program, which helps pay for school supplies, tutoring services, and graduation caps and gowns, would lose that support. This would burden underfunded schools and negatively impact Oklahomans.
• More than $29 million would disappear from human services, including those that feed the elderly, the handicapped and lower-income Indians from dozens of tribes.

• The Cherokee Nation feeds more than 35,000 households (or 90,000 individuals) every year through their federally funded food distribution program, and delivers more than 40,000 meals a year to elderly citizens. Without this funding, the state system will be flooded, and many would lose access to this vital source of food.

• More than $30 million would be lost from federal housing and community assistance for the 2008 budget.

• This means 7,398 Cherokee families would lose their federal housing assistance, including elderly citizens in apartment complexes, thousands who receive rental assistance, over a thousand persons in low-income apartments, and hundreds more who are in the process of receiving mortgage assistance.

• In rural areas, there are few housing options for low-income Indians, and the loss of this funding would force thousands into substandard housing or, even worse, make them homeless.

• In addition to the loss of more than 6,500 jobs in Oklahoma, thousands of other families would lose childcare assistance, jeopardizing their employment.
August 21, 2007

The Watson bill (H.R. 2824) would severely impact The poorest of the poor of Cherokee citizens.

If Congress eliminates the Cherokees' federal funding, the impact will be severe. Overall, the Nation would lose more than $270 million in federal funding it has estimated for its 2008 budget, and about 6,500 jobs in Oklahoma. More than 170,000 Cherokee citizens live in Oklahoma.

- The Nation would lose more than $108 million in federal funding for health care it has estimated for its 2008 budget. The Nation currently provides health care to 126,000 patients, including 241 Freedmen descendants, and it is the only source of health care for more than 44,000 American Indians from dozens of tribes. In 2006, Cherokee Nation clinics had more than 318,000 ambulatory care visits.

- Without federal funding, many of these patients have no option for treatment at all. In some communities, the Cherokee Nation clinic is the only medical facility. Others may have to drive an hour or more over poor roads to receive treatment at already overburdened rural health-care facilities.

- Without federal funding, many will have no way to pay the bills after seeing a doctor.

- Eliminating federal funding will create a health care crisis leaving many rural health-care providers with an impossible choice: treat thousands of patients who cannot pay or turn away patients requiring medical attention.

- Nearly $26 million in federal education and child care funding estimated for the 2008 budget would be cut. These programs include federal child care and programs and education services.

- 842 children in Head Start and Early Head Start programs would be affected.

- Sequoyah High School, a boarding school with an enrollment of nearly 400 Indian students from all over the country would be forced to close.

- More than 20,000 Indian students who receive assistance in their public schools through the JOM Program, which helps pay for school supplies, tutoring services, and graduation caps and gowns, would lose that support.

- More than $29 million would disappear from human services, including those that feed the elderly, the handicapped and lower-income Indians from dozens of tribes.
• The Cherokee Nation feeds more than 35,000 households (or 90,000 individuals) every year through their federally funded food distribution program, and delivers more than 40,000 meals a year to elderly citizens. Without this funding, the state system will be flooded, and many would lose access to this vital source of food.

• *More than $30 million would be lost from federal housing and community assistance for the 2008 budget.*

• This means 7,398 Cherokee families would lose their federal housing assistance, including elderly citizens in apartment complexes, thousands who receive rental assistance, over a thousand persons in low-income apartments, and hundreds more who are in the process of receiving mortgage assistance.

• In rural areas, there are few housing options for low-income Indians, and the loss of this funding would force thousands into substandard housing or, even worse, make them homeless.
Background Information on Cherokee Nation Litigation Issues

I. Introduction

With the passage of the March 3, 2007 constitutional amendment limiting citizenship to Indians on the federally authorized base roll of the Cherokee Nation, the Cherokee people voted to be just like more than 500 other Indian tribes in the United States; they voted that one must have an Indian ancestor to be in the Cherokee Nation Indian tribe. The result was that anyone who could not trace their lineage to an Indian ancestor, including approximately 2,800 descendants of former slaves (known as Freedmen descendants), would be disenrolled as Cherokee citizens.

The central issue is not about race but who is a documented Indian. For example, the Cherokee Nation has more than 1,500 citizens who have both a Freedmen ancestor and Indian ancestor listed on the Dawes Rolls, which is the U.S. census list of 1906 of the people in Cherokee lands. In addition, the tribe includes thousands of other Cherokees who also have African ancestry as well as many other Latino, White, and Asian-American citizens -- all of whom have an Indian ancestor on the Dawes Rolls.

II. Current Status

1. Freedmen Descendants Have Been Reinstated Pending Litigation

As of today, the more than 2,800 Freedmen descendants have been reinstated to citizenship in the Nation with full benefits, including the right to vote, by a Cherokee Tribal Court order while the issue is litigated there.

2. Let the Courts Decide

In addition to Cherokee Nation District Court, these issues are being litigated in U.S. District and Appellate Courts in Washington, D.C. Beyond the tribal court reinstatement, the Nation is committed to keeping the Freedmen descendants as citizens until all litigation has been resolved – and beyond if they prevail in court. Congress should allow the Federal and Tribal Courts to do their work without interference.

3. Cherokee Nation Will Fund Genealogy Studies for Freedmen Descendants

No matter the outcome in the courts, the Cherokee Nation will fund expert genealogical assistance for all Freedmen descendants who believe they have Indian ancestors on the Dawes Rolls to help them become permanent citizens.
I. Historical Background

For more than 40 years, the Cherokee Nation has worked hard to rejuvenate its heritage and restore a cultural identity to heal damage done by more than a century of federal policy aimed at assimilating Native Americans and stripping their identities as communal nations. In the midst of this effort, the Nation thoughtfully considered what it meant to be an Indian and a Cherokee. It determined it should now be what it was before the arrival of settlers and recognize the fundamental principle that an Indian tribe should be comprised of only descendants of Indians. Thus, the Nation sees itself as part of a community of other Indian nations in the United States, with a common history and bond.

Most recently, on March 3, 2007, the Cherokee Nation passed a constitutional amendment by 77% of Cherokee voters that codified this fundamental principle, limiting citizenship to those with Indian ancestors listed on the Dawes Rolls. Given this historic fundamental principle, the Cherokee Nation has also extended citizenship to Delawares and Shawnees who share a common Indian history and have been adopted by the Cherokees for historical reasons. Freedmen descendants voted in the referendum. As a result, only individuals who had documentation proving Indian ancestry – as determined by the 1906 U.S. government survey that allotted Indian lands known as the Dawes Rolls – could be citizens of the Cherokee Nation. Those who did not have an Indian ancestor listed on the Dawes Rolls could not be citizens. Those who did were completely unaffected.

The charge that the Nation is racist based on the passage of the March 3, 2007 constitutional amendment is false. As noted above, any person -- regardless of race -- who has an Indian ancestor on the Dawes Rolls (whether Cherokee, Shawnee or Delaware) is eligible to become a citizen of the Nation.

There is another fundamental principle that the Cherokee Nation and all Indian tribes in the United States consider precious, and that is the legal and historic doctrine of sovereignty and self-government of Indian nations. According to this doctrine, Indians can decide for themselves who can and cannot be members of their tribes. As courts and commentators have all recognized, the ability to define tribal membership lies at the core of tribal identity and self-governance.

III. Chronology of Significant Events

May 14, 2007

A Cherokee Nation District Court issues an order reinstating the approximately 2,800 Freedmen descendants to citizenship with full benefits and the right to vote pending litigation on the issue. The stay was requested by the attorney for the Freedmen descendants and had the support of the Attorney General of the Cherokee Nation.

May 17, 2007

The Cherokee Nation District Court issues another order reopening voter registration for the Freedmen descendants who were reinstated.
May 21, 2007

The Bureau of Indian Affairs rejects the 2003 constitutional amendment revoking the federal government's right to approve Cherokee Nation constitutional amendments on the basis that Freedmen descendants did not have the chance to vote for the amendment. This issue is being litigated in Federal and Tribal Courts. Cherokee Nation Principal Chief Chad Smith placed the same question on the ballot for the June 23, 2007 General Election in which reinstated Freedmen descendants could vote.

June 21, 2007

U.S. Rep. Diane Watson from Los Angeles, California introduces H.R. 2824 to sever the U.S. relations with the Cherokee Nation and to cut off federal funding.

June 23, 2007

The Cherokee Nation General Election occurs. Among other things, Chief Smith is reelected and the constitutional amendment revoking the federal government’s right to approve Cherokee Nation constitutional amendments is approved by 67%.

July 26, 2007

U.S. Rep. Mel Watt introduces an amendment during the Financial Services Committee mark-up to specifically exclude the Cherokee Nation from H.R. 3002, a guarantee loan program for affordable housing.

July 27, 2007

Cherokee Nation holds runoff elections for Tribal Council seats in Districts 1 and 2 of the Nation. Reinstated Freedmen descendants are again eligible to vote.

July 31, 2007

During a Financial Services Committee mark-up session, Mr. Watt introduces and withdraws an amendment to exclude the Cherokee Nation from H.R. 2895, a bill to establish a National Affordable Housing Trust Fund in the U.S. Treasury to provide for the construction, rehabilitation, and preservation of decent, safe, and affordable housing for low-income families.

September 6, 2007

The U.S. House passes H.R. 2786, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2007 as amended by an amendment by Rep. Watt to prohibit any such funds from going to the Cherokee Nation. This bill is further amended by U.S. Rep. Dan Boren staying the effect of Congressman Watt’s amendment until the Cherokee Nation Tribal Courts resolve the litigation.
Mr. Chief Justice Marshall delivered the opinion of the Court:

This bill is brought by the Cherokee nation, praying an injunction to restrain the state of Georgia from the execution of certain laws of that state, which, as is alleged, go directly to annihilate the Cherokees as a political society, and to seize, for the use of Georgia, the lands of the nation which have been assured to them by the United States in solemn treaties repeatedly made and still in force.

If courts were permitted to indulge their sympathies, a case better calculated to excite them can scarcely be imagined. A people once numerous, powerful, and truly independent, found by our ancestors in the quiet and uncontrolled possession of an ample domain, gradually sinking beneath our superior policy, our arts and our arms, have yielded their lands by successive treaties, each of which contains a solemn guarantee of the residue, until they retain no more of their formerly extensive territory than is deemed necessary to their comfortable subsistence. To preserve this remnant, the present application is made.

Before we can look into the merits of the case, a preliminary inquiry presents itself. Has this court jurisdiction of the cause?

The third article of the constitution describes the extent of the judicial power. The second section closes an enumeration of the cases to which it is extended, with "controversies" "between a state or the citizens thereof, and foreign states, citizens, or subjects." A subsequent clause of the same section gives the supreme court original jurisdiction in all cases in which a state shall be a party. The party defendant may then unquestionably be sued in this court. May the plaintiff sue in it? Is the Cherokee nation a foreign state in the sense in which that term is used in the constitution?

The counsel for the plaintiffs have maintained the affirmative of this proposition with great earnestness and ability. So much of the argument as was intended to prove the character of the Cherokees as a state, as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful. They have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognize the Cherokee nation as a state, and the courts are bound by those acts.

A question of much more difficulty remains. Do the Cherokee constitute a foreign state in the sense of the constitution?

The counsel have shown conclusively that they are not a state of the union, and have insisted that individually they are aliens, not owing allegiance to the United States. An aggregate of aliens composing a state must, they say, be a foreign state. Each individual being foreign, the whole must be foreign.

This argument is imposing, but we must examine it more closely before we yield to it. The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. In the general, nations not owing a common allegiance are foreign to each other. The term foreign nation is, with strict propriety, applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist no where else.

The Indian territory is admitted to compose a part of the United States. In all our maps, geographical treaties, histories,
and laws, it is so considered. In all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States, subject to many of those restraints which are imposed upon our own citizens. They acknowledge themselves in their treaties to be under the protection of the United States; they admit that the United States shall have the sole and exclusive right of regulating the trade with them, and managing all their affairs as they think proper, and the Cherokees in particular were allowed by the treaty of Hopewell, which preceded the constitution, "to send a deputy of their choice, whenever they think fit, to congress." Treaties were made with some tribes by the state of New York, under a then unsettled construction of the confederation, by which they ceded all their lands to that state, taking back a limited grant to themselves, in which they admit their dependence.

Though the Indians are acknowledged to have an unquestionable, and, heretofore, unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile, they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.

They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the president as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connexion with them, would be considered by all as an invasion of our territory, and an act of hostility.

These considerations go far to support the opinion, that the framers of our constitution had not the Indian tribes in view, when they opened the courts of the union to controversies between a state or the citizens thereof, and foreign states.

In considering this subject, the habits and usages of the Indians, in their intercourse with their white neighbours, ought not to be entirely disregarded. At the time the constitution was framed, the idea of appealing to an American court of justice for an assertion of right or a redress of wrong, had perhaps never entered the mind of an Indian or of his tribe. Their appeal was to the tomahawk, or to the government. This was well understood by the statesmen who framed the constitution of the United States, and might furnish some reason for omitting to enumerate them among the parties who might sue in the courts of the union. Be this as it may, the peculiar relations between the United States and the Indians occupying our territory are such, that we should feel much difficulty in considering them as designated by the term foreign state, were there no other part of the constitution which might shed light on the meaning of these words. But we think that in construing them, considerable aid is furnished by that clause in the eighth section of the third article; which empowers congress to "regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

In this clause they are as clearly contradistinguished by a name appropriate to themselves, from foreign nations, as from the several states composing the union. They are designated by a distinct appellation; and as this appellation can be applied to neither of the others, neither can the appellation distinguishing either of the others be in fair construction applied to them. The objects, to which the power of regulating commerce might be directed, are divided into three distinct classes-foreign nations, the several states, and Indian tribes. When forming this article, the convention considered them as entirely distinct. We cannot assume that the distinction was lost in framing a subsequent article, unless there be something in its language to authorize the assumption.

The counsel for the plaintiffs contend that the words "Indian tribes" were introduced into the article, empowering congress to regulate commerce, for the purpose of removing those doubts in which the management of Indian affairs was involved by the language of the ninth article of the confederation. Intending to give the whole power of managing

http://www.mtholyoke.edu/acad/intrel/cherokee.htm

11/8/2006
those affairs to the government about to be instituted, the convention conferred it explicitly; and omitted those qualifications which embarrassed the exercise of it as granted in the confederation. This may be admitted without weakening the construction which has been intimated. Had the Indian tribes been foreign nations, in the view of the convention; this exclusive power of regulating intercourse with them might have been, and most probably would have been, specifically given, in language indicating that idea, not in language contradistinguishing them from foreign nations. Congress might have been empowered "to regulate commerce with foreign nations, including the Indian tribes, and among the several states." This language would have suggested itself to statesmen who considered the Indian tribes as foreign nations, and were yet desirous of mentioning them particularly.

It has been also said, that the same words have not necessarily the same meaning attached to them when found in different parts of the same instrument: their meaning is controlled by the context. This is undoubtedly true. In common language the same word has various meanings, and the peculiar sense in which it is used in any sentence is to be determined by the context. This may not be equally true with respect to proper names. Foreign nations is a general term, the application of which to Indian tribes, when used in the American constitution, is at best extremely questionable. In one article in which a power is given to be exercised in regard to foreign nations generally, and to the Indian tribes particularly, they are mentioned as separate in terms clearly contradistinguishing from each other. We perceive plainly that the constitution in this article does not comprehend Indian tribes in the general term "foreign nations," not we presume because a tribe may not be a nation, but because it is not foreign to the United States. When, afterwards, the term "foreign state" is introduced, we cannot impute to the convention the intention to desert its former meaning, and to comprehend Indian tribes within it, unless the context force that construction on us. We find nothing in the context, and nothing in the subject of the article, which leads to it.

The court has bestowed its best attention on this question, and, after mature deliberation, the majority is of opinion that an Indian tribe or nation within the United States is not a foreign state in the sense of the constitution, and cannot maintain an action in the courts of the United States.

A serious additional objection exists to the jurisdiction of the court. Is the matter of the bill the proper subject for judicial inquiry and decision? It seeks to restrain a state from the forcible exercise of legislative power over a neighbouring people asserting their independence; their fight to which the state denies. On several of the matters alleged in the bill, for example on the laws making it criminal to exercise the usual powers of self-government in their own country by the Cherokee nation, this court cannot interpose; at least in the form in which those matters are presented. That part of the bill which respects the land occupied by the Indians, and prays the aid of the court to protect their possession, may be more doubtful. The mere question of right might perhaps be decided by this court in a proper case with proper parties. But the court is asked to do more than decide on the title. The bill requires us to control the legislature of Georgia, and to restrain the exertion of its physical force. The propriety of such an interposition by the court may be well questioned. It savours too much of the exercise of political power to be within the proper province of the judicial department. But the opinion on the point respecting parties makes it unnecessary to decide this question. If it be true that the Cherokee nation have rights, this is not the tribunal in which those rights are to be asserted. If it be true that wrongs have been inflicted, and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future.

The motion for an injunction is denied.